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INDUSTRIAL COMBINATIONS—EXISTING LAW AND SUGGESTED LEGISLATION[1]

The subject chosen by your society for discussion at this meeting, the Regulation of Industrial Combinations, or to use a well-worn phrase, the Trust Problem, is so sweeping in its comprehensiveness, so interminable in its possible ramifications, that only by a resolute process of elimination can one hope to arrive at any definite conclusion concerning it. Nevertheless, if it is treated too much in fragmentary and piecemeal fashion, any result reached is bound to give the impression of resting on a merely partial and insufficient consideration of the subject and therefore to appear inconclusive. I shall attempt in my remarks to steer a middle course between the discursiveness which the subject invites, and the omissions which a desire to get somewhere suggests; but no one can appreciate more acutely than I do the difficulty of such endeavor.

I propose to consider briefly the general aspects of the question merely for the purpose of arriving at the principles on which positive law dealing with the subject must rest; then to discuss what the law as represented by the Standard Oil and Tobacco decisions now is; and finally to suggest what the law, by means of legislation supplemental to those decisions, should become.

I

Any great social, religious, or economic movement is certain to be accompanied by manifestations not really germane to the

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movement itself. Stripped of externals, however, the basis of the movement which has resulted in our great industrial corporations has been combination. There is nothing mysterious in combination. We are all familiar with the principle in our daily lives. Combination consists in acting with others instead of acting alone. It is the basis of practically all successful human endeavor. The gist of the combination idea, the inherent, inevitable incident of the abstract fact of combination is aptly suggested by the maxim, "In union there is strength."

This simple and familiar principle applied to business resulted first in the partnership, then in the corporation, and finally in the combination of many corporations, or trust.

Let me try to state definitely (for unless we can say in plain English what are the benefits and the evils of trusts it is hardly worth discussing the matter at all) just what advantages are secured when the principle of combination in its simple and proper form is applied to a dozen or more corporations in a given trade. The combination will have the following advantages which the individual corporations did not possess:

1. Opportunity for comparative administration and accounting among the several corporations merged.

2. Ability to buy in large quantities and therefore cheaply.

3. More perfect organization. This includes saving in salaries of higher officials. Where before there were vice-presidents and superintendents for each plant, there need now be only one superintendent and one set of higher officials for a district.

4. Ability to handle large orders.

5. Ability to sell in large quantities and therefore at a smaller percentage of profit.

6. Ability to save charges of transportation by shipping from the plant nearest in location to the consumer.

7. Ability to utilize waste.

8. Opportunity for experimentation.

9. Ability to specialize labor.

10. Possibility of dispensing with many traveling salesmen.

11. Less expenditures for advertising.

The reasons for combining suggested by the above enumera-

tion are good reasons. They cannot be argued away. They represent enlightened commercial instinct. They involve nothing immoral or vicious. Combinations founded and maintained to secure and perpetuate these or similar advantages have come to stay. It is to the interest of the public that they should stay. It does not follow that these advantages increase in regular ratio with the size of a combination. The point at which their possibilities may be exhausted is as yet uncertain, and to some considerable extent must depend on the nature of the business in which they are sought to be enjoyed. As far as they go, however, the advantages are real and substantial.

A new fashion has recently come into vogue of denying that combinations acquire added economic efficiency. If by this is meant that by reason of its great size a combination may become so unwieldy as not to be susceptible to wise management by fallible human beings; or if it is meant that certain great combinations by reason of their control of the market have become indifferent to the question of real efficiency, there is truth in the statement. If, however, it is intended to suggest that under wise and proper management a concern doing things in a large way cannot turn out better products at a less cost than the small concern, we must charitably allow the statement to pass as a mere assertion not worth the easy task of disproving.

There is another side to the picture. The principal reason why combinations in this country have in fact been made remains to be told. That reason is the desire to end competition and thereby to acquire at least a partial practical monopoly. The combination which does this has the power to dictate terms to the laborer and to fix prices for the consumer. In plain words it may do as it pleases. Hereafter I shall refer to this power under the arbitrary designation "monopoly control."

Often when a great combination has been contemplated, the line of thought of those concerned in launching it has been something like this: "There has been too much competition in our industry; none of us make as much money as we ought. Let us stop cutting one another's throats and come together. Let us form a large corporation, with broad powers, to take over the busi-

ness of all, retaining perhaps separate units of production. That will end at once all competition among those of us who come in. Besides, it will put us in a commanding position in the trade. If others who do not come in try to cut under us we can take care of them in short order. We will sell at a loss if need be until they will be glad to let us alone or beg to join us. With our tremendous capital we can stand it. It will soon be known that interference with us means ruin. Before long we shall secure control and get the prices we should. In short, if we put the thing through we shall be able to do as we please and the public be damned."

When the forming of a combination has been instigated by outsiders, chiefly for the profits to be obtained from its promotion, and there is consequently an excessive initial cost to the forming of the combination, this sort of reasoning is certain to receive special emphasis.

Very evidently a combination founded as the result of such ideas is going to depend on something else than the economic efficiency which I have previously considered. It contemplates getting rid of competition, not by the proper method of lowering the selling price of its products, but by either buying up competitors or killing off competition by means of what may be described as cut-throat methods. The prevention of new competition, or if prevention is not possible, the crushing of it as soon as it shows its head, is of course also contemplated.

Such a combination invariably capitalizes the monopoly control it expects to enjoy, and its successful existence depends on its ability to pay dividends on that economically false value. Intrinsically such a combination is peculiarly susceptible to competition. By this I mean that irrespective of the intention of its promoters it must depend on something else than the natural course of fair trade. In the natural course of fair trade, existing or new competition which does not require a return on a wholly fictitious value would rise in its might and destroy such a combination. Left to the mercy of sound economic principles it would totter and fall.

From a theoretical point of view competition, actual or potential, will not permit the existence of monopoly control. What would happen in theory can, I believe, be made to occur in fact.

At present it does not represent the usual course of events. Effective in theory, potential competition under actually existing circumstances is impotent. Economically a fictitious value, monopoly control is practically a very real asset. Corporations founded and maintained to a considerable extent on this basis have been able to carry on a successful existence, to pay dividends on watered capital, and have not shared the economic benefits of combination with the consumer. How have they managed this? They have done so, in a word, by the use of unfair methods. They have paid large sums for the plants of competitors and then abandoned the plants. They have expended considerable amounts in acquiring sources of supply to an extent very much greater than was reasonably needed in their own business. Where competition existed they have sold goods at less than cost, and recouped themselves off the general market. They have bought off, kept off, and killed off competition. They have maintained secret subsidiary companies, and have thereby acquired the trade of many persons who would not deal directly with the trust. They have obtained, often by coercive methods, agreements from other persons not to engage in their trade. They have made discriminations among customers. They have refused to deal with competitors or persons who deal with competitors. They have sold their products under restrictive terms aimed at competitors. By reason of inadequate provision for publicity in our corporation laws they have been able to conduct their operations secretly so that floating capital has not been aware of the facts; has not, in a word, had sufficient data on the strength of which to institute competition.

Unfair practices, methods which the persons employing them would hesitate to use in their strictly private lives, created the trust problem, and today are responsible for the difficulties of the existing situation. Many of our great business men have been governed not by self-restraint and a regard for the fitness and decency of things, but by a desire to overreach. The temptation has been great. In this country with its vast wealth and its unlimited opportunities it has been alluringly apparent that millions of money could be made by varying ever so little from the straight path of commercial fairness, and not a few of the leaders

in our industrial affairs have been unable to resist the glittering opportunity. They have been a little "smarter" than they knew they ought to be. It has been so easy to control the situation by methods for which more or less plausible arguments can even now be made, that practices have become common which enlightened public opinion today condemns. The fact that such methods have in the past been commonly used by the individual trader on a small scale does not justify their use by corporations controlling a large part of a given industry. The very nature of the transaction is changed when the power to inflict injury becomes real and great.

Before discussing what the law now is, it is necessary to emphasize the fact that there are different forms of combination. There are two extreme types, and between these lie combinations of very varying degrees.

Suppose there are a dozen or more corporations in a given trade. These draw up and execute an agreement to maintain prices at a certain level, to impose restrictive terms on their customers, and to divide up the trade of the country. This is a loose combination, or combination by agreement, sometimes called a pool. Often the provisions of such agreements are elaborate. There is no limit to their possibilities save only the limit of man's ingenuity.

These loose combinations have certain general characteristics. No sacrifice of invididual identity, which is such a strong deterrent force against real fusions, is involved. The object is merely to restrict competition among independent business units. The operations of the combination are not subject to a publicity which will permit potential competition to know the facts. The real economic benefits of combination are not secured. Lastly it is difficult to handle the combination except by dissolution. The result of such a combination is inevitably to raise prices. Generally speaking it is a great evil. Its only possible excuse is that in some extreme cases there comes about a competition so ferocious that the parties to it will be ruined if it continues.

The other extreme type of combination occurs when an existing corporation, or a corporation formed for the purpose, actually buys the plants or all the capital stock of the various companies

merged. Broadly speaking this is hardly a combination at all. It is a genuine merger or fusion in which the parts lose their identity, and there emerges a new whole, an entity complete and independent.

Between these two extremes are those combinations where the principal corporation owns only a majority of stock in other corporations, where it controls stock of corporations which own stock of still other corporations, where there are interlocking boards of directors, and so on. It is impossible even to enumerate all the different kinds.

II

The Sherman Anti-Trust act, the most discussed statute of our time, was passed in 1890 to deal with the trust problem. The statute was a piece of trial legislation—a shot into the air—but it was a shot of sweepingly wide range. Unless given a technical meaning the words of the act are broad and indefinite. It was open to the court to adopt any one of many varying constructions. As a matter of fact interpretation of the words of the Sherman law has varied with the spirit and needs of the times. The decisions constitute a long course of judicial legislation. In the first instance it appeared that loose combinations were clearly forbidden, and their evil results were recognized by the court. The first effect of the anti-trust act was to drive combinations into the corporate form.

Then it was seen that similar evil results were often manifest in the case of corporate combinations, and (without considering the essential difference between the two) the act was applied to them on the same terms on which it had been applied to loose combinations. It was held that any substantial restraint of competition was illegal; that trade was restrained by the ending or limiting of competition among those who voluntarily combine, whether in the form of a corporation or not; and that this was true whether or not the combination affected the competition of outsiders. Nevertheless there is a fundamental distinction between the two forms of combination. As has already been suggested in this paper, in the former case the combination is an intangible, temporary, and often secret thing, not recognizable by the public and difficult to be

dealt with by the law. In the latter case the combination is a definite entity which can be identified by the public, and which the law can readily deal with as it pleases. Moreover its brings with it the real economic advantages of large scale production. The application of this rule to corporate combinations made the existence of every great corporate combination in the country probably illegal, although this was not fully recognized until some years after the decision in the Northern Securities case, where the principle was first laid down. In short, it is fair to say that the law and business of the country had got into what is little exaggeration to call an *impasse*.

Then came the decisions in the Standard Oil and Tobacco cases, and the situation which had appeared to be a blind alley from which there was no turning, save by the means of remediable legislation which it seemed impossible to obtain, became greatly cleared up. Those decisions deserve the admiration of every intelligent man, whether business man or lawyer, as representing the highest form of performance of the judicial function.

The law as left by these decisions may be summarized as follows. Any undue or unreasonable restraint of interstate trade is illegal. Trade is unduly restrained by agreements which lessen competition among those agreeing to an extent which may reasonably be thought to injure the competing or consuming public. Trade is also restrained unduly by acts, combinations, or mere conditions of existence, which represent a purpose to increase the trade of those who are parties to the assailed transaction or condition, by interfering with the right to trade of those who are strangers to such transaction or condition; or, in other words, a purpose to acquire monopoly control. Trade is not necessarily unduly restrained by the termination of competition among those who voluntarily combine in the form of a corporate combination. Nevertheless, the combination of a great number of previously independent corporations, certainly if by means of a holding company, and probably if by means of the purchase of plants outright, creates a prima facie case of illegality. Given an undue restraint, the law can reach any possible form of organization or condition of existence in which such restraint is manifested.

A corporation, whether it represents a combination or not, may increase its business to any extent, if it does so not by interfering with the right of others to compete, but by means of proper methods. The following are obviously proper methods: excellence of product, lowness of selling price, efficiency of management, skill in marketing of product, and ability to attract the custom of the public by reason of the above methods and by advertising. To meet increased trade acquired by proper methods, a corporation, whether it represents a combination or not, may increase its capital to any amount, extend its plant to any size, and may purchase the plants of any persons or corporations who are genuinely willing to sell.

A corporation, whether it represents a combination or not, may not attempt to acquire monopoly control. It may not increase its trade by interfering with the right of others to trade, that is, by killing off or preventing the competition of outsiders by means of unfair methods. Unfair methods are many, and no general description can cover them all. Broadly speaking, they consist principally in acts which, *standing alone*, are not for the benefit of the corporation, but for the purpose of injuring others.

Such, I think, is the fair interpretation of the recent decisions. Throughout the opinions in both cases, it is the rights of outsiders, of strangers to the assailed transactions, which are insisted upon. The dominating note of the recent decisions is this warning addressed to business men: "You shall not interfere unfairly with the rights of others." The subject of attack is not the perfectly sound economic principle of combination, but monopoly control and unfair methods; loosely speaking, wrongdoing.

The broad principles of the recent decisions are sound. They represent a sound analysis of the trust problem, considered from the economic point of view which is manifestly the proper one.

I believe the sociological problems, the questions of wages and labor, go far deeper than what is really involved in the trust problem and that it is a mistake to confuse the two. I recognize the barbarity which permits the employment of young children. To my mind the propriety of establishing something in the nature of a minimum wage for all labor, to which if necessary the government should contribute a part, is clear. It is very well to talk

about the interests of business, and to lay stress on the argument that we must not be allowed to fall behind in the world's trade. But when we are confronted by the concrete case of a small and weakly child spending long hours at labor in a factory, or by the concrete case of a man working at his daily task for ten or twelve hours a day, for seven days a week, and as a result securing, for himself and family, compensation barely enough to keep body and soul together, we know that such a state of affairs is wrong; that all the specious arguments in the world do not make it right; and that something must be done about it. To put it in its broadest terms, I recognize the importance, indeed the necessity, of providing in some way that the opportunities of existence—not the rewards but the opportunities—shall be more nearly equal. But I insist that this sociological problem stands on its own feet, and is not a part of the trust problem proper, but rather of the general life of our times. The situation from the point of view of labor and employment is infinitely worse in England and on the Continent of Europe than it is in this country. We do not have to contend here with that terrible problem of a starving, submerged poor, to anything like the same extent that they do abroad. Yet there are no trusts as we understand the word in England and on the Continent. Let us endeavor to ameliorate conditions which require and deserve it, but let us not confuse our minds and retard our progress by the false assumption that this sociological problem is inherently or peculiarly a part of the trust problem.

The economic view of the trust problem requires merely that the law should provide and insist on fair play for competition and fair play for combination. In the past combinations have had a giant's strength, and have been permitted to use it like a giant. Under proper conditions things may be safely left to work out their own course. It is by no means certain, in fact it is extremely doubtful, whether the combination movement, if made to depend simply and solely on real economic efficiency, will go to the point which many seem to dread. Indeed I risk the prophecy that when it is made clear that combinations are no longer to have a sure thing, competition, the natural and proper remedy for monopoly, will to a great extent check that movement.

It is true that there are strictly business advantages in combination. It is also true that there is a very general desire for individual identity. It is true that men do not care to enter a hopeless fight; but the instinct to compete remains a primary characteristic of the American people, and requires only opportunity to enter a contest which shall be fair. Human nature may well be too strong for a mere economic principle. At any rate the law will have properly performed its function if it insists on an absolutely fair and open path on which events may take their natural course, whatever that may be. If the real economic benefits of combination are sufficient to carry the day, well and good. When that has occurred, if it ever does, a new problem, requiring different treatment from that now before us, will have arisen. In the meantime and immediately, the economic advantages of combination must be stripped of the extraneous support of unfair methods.

III

I have tried to point out what principles should govern positive law on the subject of trusts. I have also expressed the opinion that the Standard Oil and Tobacco cases represent those sound principles. If this is true why does anything remain to be done?

The difficulty with the existing situation is that the present machinery of the government is not adequate to carry out these sound principles in practice; that the principles so far as they are embodied in positive law appear only in general terms, and do not furnish a definite guide for either business man or government. In a word, we are left to depend on an absurd anomaly, the regulation of business by law-suit.

In my opinion the time is ripe when a plan which shall be well rounded and complete may be enacted into positive law. Further experience is hardly likely to reveal phases of the question not already perceived. Business men have at last seen the blind folly of fighting tooth and nail against any restrictive legislation whatever. Largely as a result of the prosecutions and civil suits brought by the government under the anti-trust act their minds have become readjusted to more wholesome standards. Honest and wise legislation, if it can be obtained, will receive a very general welcome.

The legislation to be adopted must appeal favorably to the average man's sense of fairnesss. Right and wrong as the terms are commonly understood exist here as elsewhere. That which is permitted must appeal to the average man as right, and that which is forbidden must appeal to the average man as wrong. The law must not discriminate against the wise, the farseeing, the successful, on behalf of the unskilful and the indifferent. Competition and trade must probably always remain to some extent a species of warfare. Men of ability, brains, ambition, and imagination will win, in this fight as in any other, over less capable opponents. The accredited and proper weapons to be used are satisfactory service and products, and cheapness to the consumer. Blows struck from behind with the bludgeon of unfair methods must be declared to be against the rules. What does this mean when applied to the combination idea? It means this—the law need not insist arbitrarily on competition: neither should the law accept it as a settled fact that competition is played out, and permit the combination idea to be artificially forced. Competition must have a fair chance.

It is easy to indulge as I have done in the generalizations and broad statements common to discussions of this great subject. When it comes to specific legislation, the matter at once becomes exceedingly difficult. In fact it is a task which may well make even the reckless timorous. Nevertheless I am going to offer for your consideration very definite suggestions for legislation; and my suggestions are these:

Public Service companies are, of course, entirely excluded from consideration.

Actually existing combinations which have reached their present condition through unfair methods which in the future will be forbidden must either (*a*) disintegrate under the anti-trust law, or (*b*) reorganize under the federal Corporation law to be mentioned later.

Legislation when finally enacted would of course be consolidated in one statute. As, however, there are several integral parts to the plan I suggest, and as it is possible that some might be approved and some rejected, for clearness I have separated my suggestions into parts.

Part 1. The anti-trust act retained without amendment.

Part 2. An Act of Congress forbidding all sorts of unfair competition, which shall apply to all corporations doing an interstate business, whether incorporated under the federal law or not, the sections of which shall be substantially as follows:

SECTION 1. Any corporation which itself, or through any person or persons, or through any other corporation or corporations, in any manner sells, leases, or supplies its products in any part of the United States at a lower price than the average net price at which it sells, leases, or supplies similar products in similar amounts elsewhere in the United States, for the purpose of destroying competition, shall be liable to any bona fide competitor for all damage thereby caused to such competitor. Proof by the plaintiff of six sales made by the defendant at a certain price shall be prima facie proof of the average net price. Any director or officer of any corporation giving instructions or being actively responsible for the doing of any act above described as imposing liability on his corporation shall be subject to a fine of not over $10,000 or imprisonment for not over one year.

SEC. 2. Any corporation which itself, or through any person or persons, or through any other corporation or corporations, in any manner refuses to sell, lease, or supply without restrictive terms, its products to any person, partnership or corporation, upon being tendered in cash the price, allowing for usual discounts at which it sells, leases or supplies such products in similar amounts to persons with whom it deals, and allowing for freight rates, shall be liable to any such persons, partnership, or corporation offering to buy, for all damage thereby caused to such intending purchaser; provided that it shall be a defense to such action if the defendant corporation proves that it was in fact unable to sell, lease, or supply as requested. Any director or officer of any corporation giving instructions or being actively responsible for the doing of any act above described as imposing liability on his corporation shall be subject to a fine of not over $10,000 or to imprisonment of not over one year.

SEC. 3. Any officer or director of any corporation who gives instructions or is actively concerned in causing any person to enter the employ of a competing corporation for the purpose of spying on its operations, and learning its methods, or otherwise employing any person for such purpose, shall be subject to a fine of not over $10,000 or to imprisonment of not over one year, and any person who is so employed shall be subject to the same penalties.

SEC. 4. No corporation engaged in interstate trade shall hold or have any beneficial interest in the stock of any other corporation in the name of any trustee, or in any other name than its own. Every corporation shall report to the federal Trade Commission all stock of other corporations held by it. Any corporation failing to observe the provisions of this section shall be

liable to a fine of not over $50,000, and any director or officer responsible for such failure shall be subject to a fine of not over $10,000 or to imprisonment of not over one year.

The above section is intended to prevent secret subsidiary or bogus independent companies.

SEC. 5. No corporation shall acquire more than 20 per cent of the source of natural supply for the business in which it is engaged. (Penalties.)

I have not been able to put the provisions of the above section in statute form satisfactory to myself. The intent is to prevent the keeping off of competition by controlling the primary raw material of an industry, such as ore lands, mineral deposits, and the like.

This part of the legislative program would apply to all corporations doing interstate business. As to this there is nothing voluntary. It is intended to furnish definite rules for business men, and at the same time to enable the government to prosecute single misdemeanors instead of an entire conspiracy. All other definite and easily ascertained forms of unfair competition should be included in this part of the program.

Part 3. An act of Congress forbidding the making of combinations, except by purchase of plant or all capital stock, substantially as follows:

SECTION 1. No corporation engaged in interstate trade shall purchase or hold any less than the entire capital stock of any other corporation or corporations. Any corporation may purchase outright for cash or stock the entire capital stock or the whole or any part of the plant of any other corporation. Any director or officer of any corporation giving instructions or being actively responsible for the doing of any act forbidden by this section shall be subject to a fine of not over $10,000 or to imprisonment of not over one year.

Part 4. An act of Congress forbidding loose combinations, except under certain conditions, substantially as follows:

SECTION 1. Any corporation which, except as permitted by Part 3, enters into any agreement, combination, form of organization or condition of existence with any other corporation or corporations, individual or partnership, the effect of which is to lessen directly and substantially competiton among the persons so agreeing or arranging, shall be subject to a fine of not over $50,000; and any director executing or voting for any such agreement or arrangement shall be subject to a fine of not over $10,000, or to imprisonment

of not more than one year. Any person executing or entering into any such agreement or arrangement shall be liable to the fines and subject to the penalties provided for in the case of directors of corporations. Provided, however, that such agreements may be made if filed with the federal Trade Commission, and if after a public hearing on the same which shall be advertised so that all interested persons may have thirty days' notice thereof, the said commission approves the terms, including prices fixed thereby. And provided also that this section shall not be held to forbid bona fide partnerships of individuals the members of which assume full partnership liability.

Parts 3 and 4 are intended to draw a sharp distinction between loose combinations and real fusions. The first defines exactly how real fusions are to be made. It should be noted that as to such combinations there is no provision for government regulation of prices. In the case of real fusions competition itself will effectually regulate prices. There is no necessity for applying an undesirable method of treatment to the combination principle when it appears in this genuine and economically sound form.

Part 4 forbids loose combinations of every kind and in any form except when expressly permitted by the federal authority, to which in this instance is given power to regulate prices. I think there is no alternative for this except to forbid loose combinations without exception. On such combinations competition has practically no effect.

I have in these suggestions provided for criminal penalties but I feel that making a crime of acts which belong in the sphere of economics is at best an unfortunate necessity. Frankly I do not know whether it is really necessary or not. Of course the penalties in the suggested legislation would stand on a very different basis from those provided by the Sherman law. The former cover only definite acts; the latter apply to conduct which is even yet not precisely described. Moreover in the case of the proposed legislation, business men would have notice in advance of what was unlawful. The practically ex post facto element of criminal proceedings under the Sherman law would be lacking. If, however, the same result could be attained merely by civil liability for damages by securing to the competitor the fair chance to which he is entitled, by permitting him to profit directly from the trust evils, I should prefer that method. Possibly the desired result

could be attained in still another way. All interstate corporations could be required to take out a federal license and the license could be revoked as to any corporation which enaged in the forbidden unfair competition, or otherwise violated the proposed statutes.

Part 5. An act of Congress providing for the voluntary incorporation of companies doing interstate business. This should be in general like the Massachusetts Business Corporation law. It should, however, require more detailed reports as to property against which stock is issued. It should also provide that the issue of bonds, and of stock subsequent to the original stock issue, should be approved by the federal Trade Commission.

Part 6. An act of Congress providing for a federal Trade Commission of [any suitable number] members, whose duties shall be to have general charge of the voluntary incorporation of interstate companies under Part 5; to receive reports as to stock ownership; to pass on agreements of loose combinations; to require such additional publicity as to corporate reports as the commission may think best to prescribe; to require uniform methods of accounting; and to make recommendations for further legislation. This commission should not have power to instruct or advise as to single acts of corporate management, such as the purchase of other companies, the plans for the development of a business and the like.

I wish to emphasize my opinion that this commission should not be a board to which business men could run and ask questions. I do not believe that idea is workable at all. I do not believe the members of such a commission, whoever they were, would be competent to advise corporations as to detailed business transactions. Moreover under proper legislation such advice would be entirely superfluous. The law itself should be clear enough for a business man to know what he can and cannot do legally, without asking the advice of a government official.

Part 7. An act of Congress definitely connecting the proposed legislation with the Sherman law substantially in the following form:

SECTION 1. The doing of any of the acts prohibited by the foregoing acts of Congress or any of them shall constitute a prima facie case of unreasonable restraint of trade under the anti-trust act in any civil proceeding.

SEC. 2. Any corporation, which has not violated any of the provisions of any of the foregoing acts of Congress and has incorporated under the federal law, shall be liable to prosecution, dissolution, or injunction under the anti-trust act, only on proof that it has in some way not specified in any of said acts directly and maliciously injured any one or more of its competitors.

Many persons, including the President in his message to Congress, have favored legislation supplemental to the anti-trust act. Supplemental legislation must have for its intent an endeavor to clear up the existing situation. This it cannot do unless it connects itself by express reference to the anti-trust act. There must not be left a missing link in the chain of legislation. There must be a harmonious whole made up of definitely related parts.

It seems to me fair that when a corporation deliberately disobeys any plain provision of statute law, it should assume the burden of proving that it has not unreasonably restrained trade. On the other hand, if the corporation has faithfully obeyed every provision of statute law which is expressed in definite terms and has voluntarily submitted to the requirements of the federal Incorporation law, I think it should be liable to action under the anti-trust act only when it has in some new and ingenious way wrongfully injured its competitors. Only by such injury could it restrain trade or attempt to secure monopoly control.

I do not pretend that my suggestions represent the precise form of legislation that should be enacted. To draft a statute is a difficult matter, which can be successfully done only after full conference and free discussion with others, and this I have not had. My suggestions are offered chiefly for the purposes of illustration. In form, and as to the machinery provided for giving them effect, I have no doubt they are inadequate. But I do believe that they represent in substance the sound principles on which enlightened legislation must rest.

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